IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
APPEAL NO.82 OF 2007
IN
NOTICE OF MOTION NO.1620 OF 2006
IN
SUIT NO.159 OF 1985

Gupta Tubes & Pipes Pvt. Ltd. .. Appellant.

Vs.

The State Trading Corporation of India Ltd. ..Respondent.

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Mrs. Usha Srivastava i/b M/s. Consulta Juris for the Appellant.
Mrs. Manisha K. Chandwani i/b Juris Consultus for the Respondent.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

9th March, 2007.

P.C. :

Heard.

This Appeal arises out of the order dated 14th November, 2006 passed in Notice of Motion 1620 of 2006. By the impugned order the Learned Single Judge has dismissed the Notice of Motion. The said Notice of Motion was taken out for setting aside the ex parte order and allowing the Appellant to place on record written statement. Undisputedly, the written statement was not filed over a period of twenty years despite the fact that the

summons was duly served upon the Appellant. The only ground on which the ex parte order was sought to be set aside was that the advocate appearing for the Appellant had not informed the Appellant about the fact that the written statement was not filed. It is further case that the written statement was in fact drafted but it remained to be filed due to oversight. The Learned Single Judge has clearly observed in the impugned order that no sufficient ground has been disclosed for failure to file the written statement for a period of twenty years. Indeed the grounds disclosed for failure to file the written statement did not reveal any sufficient cause for condonation of delay in filing the written statement. The period of twenty years is too long a period and considering the same it was necessary for the Appellant to justify the said period by giving sufficient reason for the delay in not filing the written statement. Merely claiming that through oversight the written statement is not filed cannot be accepted as sufficient cause for condonation of such a long delay. It is pertinent to note that in the affidavit which was filed in support of the Notice of Motion the statement regarding the reason for not filing the written statement within the period of limitation reads thus “I say that due to oversight the written statement though drafted was not filed in court”. There

is no disclosure anywhere in the affidavit as to when the written statement was drafted, or as to where the written statement was kept or retained and by whom during all this period. To consider the claim of the Appellant that the written statement remained to be filed due to oversight, it was absolutely necessary for the Appellant to disclose all these facts. In the absence of disclosure of these facts, it is apparent that the excuse given in that regard is absolutely a lame excuse and is purely an afterthought. It cannot be said to be a sufficient cause for condonation of delay in filing the written statement and certainly not for a period of twenty years. Being so, no fault can be found with the impugned order passed by the Learned Single Judge holding that there is no valid explanation for not filing the written statement for a period of twenty years. In our opinion, the Learned Single Judge has exercised his discretion judiciously in the facts and circumstances of the case. There being no case made out for interference in the impugned order, the Appeal is rejected.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)